

## **Confidentiality and Non-Disclosure Agreement**

During the course of this Contract for gunshot detection equipment and alerting software, City and Contractor (collectively, the Parties) may be exposed to important business or technical information which is the property of the other party. The unauthorized use or disclosure of this information could harm the business of the owner of the information. For this reason, and in consideration of the mutual covenants contained in this Agreement and the mutual disclosure of confidential information to each other, the Parties agree as follows:

### **1. Confidential Information.**

(a) Confidential Information is information disclosed by the Disclosing Party (Disclosing Party) to the Receiving Party (Receiving Party) which is non-public, proprietary or confidential in nature, whether provided in writing, orally, visually, electronically or by other means. Confidential Information includes, but is not limited to the following: (i) know-how, trade secrets, tools, methods, methodologies, techniques, designs, specifications, computer source code, customer lists, customer information, marketing plans, personnel information, financial information, business strategies, and information relating to released or unreleased software, hardware or technology; (ii) information received by the Disclosing Party from third parties under confidential conditions which information is identified by the Disclosing Party as being subject to such conditions, (iii) the Disclosing Party's Trade Secrets. Trade Secrets means information which (a) derives economic value, actual or potential, from not being generally known to, or readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, or (b) is otherwise a Trade Secret as defined by California law, and (iv) the existence of this Agreement, the fact that the Receiving Party has received any information under this Agreement, and that any investigations, discussions or negotiations are taking, or have taken, place between the parties. Confidential Information disclosed to the Receiving Party by any Disclosing Party subsidiary, affiliate, or agent is covered by this Agreement.

(b) Confidential Information does not include any information that: (i) is or subsequently becomes publicly available without the Receiving Party or its Representative's (as defined below) breach of any obligation owed the Disclosing Party; (ii) became known to the Receiving Party prior to the Disclosing Party's disclosure of such information to the Receiving Party; (iii) became known to the Receiving Party from a source other than the Disclosing Party or its affiliates or advisors other than by the breach of an obligation of confidentiality owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party or its Representatives without violating any of their obligations under this Agreement.

### **2. Obligations.**

(a) The Parties shall each keep in confidence, and shall cause their respective Representatives to keep in confidence, all Confidential Information disclosed to either of them by the other and shall use such Confidential Information only for the mutually agreed upon objectives of the discussions between the Parties.

(b) Receiving Party shall exercise reasonable care to prevent the disclosure of Confidential Information to any third party, and in any event not less than the same precautions used by the Receiving Party to protect its own Confidential Information. Dissemination of Confidential

Information shall be limited to the directors, officers, employees and advisors (including legal, accounting and financial advisors) of the Receiving Party (collectively, the Representatives), whose duties justify their need to know such information and then only on the basis of a clear understanding by these Representatives of their obligation to maintain the confidential status of the information and to restrict the use of the information solely to the use granted under this Agreement. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives.

(c) All Confidential Information, including all tangible embodiments, copies, reproductions and summaries thereof, and any other information and materials provided by the Disclosing Party to the Receiving Party, shall remain the sole and exclusive property of the Disclosing Party.

(d) Receiving Party shall immediately report to the Disclosing Party any attempt by the Receiving Party's Representatives to use or disclose any portion of the Confidential Information without authorization from the Disclosing Party, and shall cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use.

(e) At the Disclosing Party's request, the Receiving Party shall return all originals, copies, reproductions and summaries of Confidential Information in the possession of the Receiving Party or its Representatives.

**3. Exception.** The obligations of confidentiality imposed by this Agreement do not apply to any Confidential Information which is required to be disclosed pursuant to operation of law or legal process, governmental regulation or court order, provided that the Receiving Party receiving such legal demand or order shall promptly inform the Disclosing Party to allow a reasonable opportunity to obtain a protective order, as appropriate. Nothing in this Agreement shall prohibit City from disclosing information that qualifies as a "public record," as that term is defined in the California Public Records Act, codified in California Government Code section 6250 through 6270.

**4. Duration.** This Agreement shall survive for a period of three (3) years after the date hereof. For Confidential Information that constitutes a Trade Secret, the restrictions set forth in this Agreement shall continue in effect for so long as such information remains a Trade Secret. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, and assigns.

**Agreed To By:**

Signature of Bidder's Authorized  
Representative

Signature of the City of San Diego Purchasing  
Agent

Approved as to Form  
City Attorney

Sonya Strickler

Print Name

Kristina Peralta

Print Name

PAIGE B. FOLKMAN

Print Name

VP Finance & Controller

Title

Director

Purchasing & Contracting

Title

Deputy City Attorney

Title

[Signature]

Signature

[Signature]

Signature

[Signature]

Signature

9/14/16

Date

9/21/2016

Date

9/23/16

Date

